

AMENDED

AGREEMENT OF LEASE

BETWEEN

TOWN OF STERLING

as LESSOR

and

MCF COMMUNICATIONS, BG INC.

As LESSEE

Dated May 2006

CARTICLE

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LEASE

of Lease made as of the date hereinafter set forth is by and between the Town of Sterling, a municipal corporation having its offices at 1114 Plainfield Pike, Oneco, Connecticut 06373 ("Lessor"); and MCF Communications, bg Inc., a Massachusetts corporation having an office at 668 Main Street, Suite 114, Wilmington, MA 01887 ("Lessee").

ARTICLE ONE Premises And Term

Lessor, for and in consideration of the rents, terms, covenants, conditions and guarantees herein reserved and contained, does hereby lease to Lessee and Lessee does hereby hire from Lessor for the Term as defined below, upon and subject to the terms, covenants, and conditions herein set forth, the Premises.

ARTICLE TWO **Definitions**

Section 2.01 Definitions. The following terms shall have the meanings ascribed to them below:

- (a) "Execution Date" shall mean the date on which both the Lessor and the Lessee shall have executed this Lease. Lessee shall be entitled to have access to the Premises, beginning on the Execution Date, for any uses allowed under Section 4.01 of this Lease, including site inspection, testing and preparation.
- (b) "Expiration Date" shall mean the earlier of (1) the date on which this Lease expires pursuant to Article Three, or (2) the date on which this Lease is terminated in accordance with either the terms of this Lease or
- (c) "Governmental Authority" shall mean the United States of America, the State of Connecticut, agencies and officials of the Town of Sterling, and any other governmental entity exercising authority or jurisdiction over
- (d) "Hazardous Materials" include all materials, substances, and wastes defined or referred to as hazardous or toxic in the Connecticut General Statutes, Regulations of Connecticut State Agencies, United States Code, or
- (e) "Initial Term" shall mean the period of time beginning on the Execution Date and ending five years after the Rent Commencement Date.
- (f) "Lease Term" or "Term" shall mean the period from the Execution Date to the Expiration Date. The Term may comprise the initial period of this Lease (the "Initial Term") and up to five periods of extension ("Extension Terms"), each such period being for five years.
- (g) "Option Period" shall mean that portion of the Lease Term beginning on the Execution Date and ending on the day immediately preceding the Rent Commencement Date.
- (h) "Premises" shall mean an area of land measuring 40,000 square feet and located within, but not including the entirety of, a parcel known as Lot 30A, Block 17 on the Town of Sterling Assessor's Map #3842 (hereafter "Town Property"). The Premises are more particularly bounded and described on Schedule A,
- (i) "Rent Commencement Date" shall mean the earlier of (1) the first day of the first calendar month after the date on which the Lessee completes the installation of the tower; (2) the first day of the first calendar month

during which any telecommunications transmission services are provided to any of Lessee's customers or clients from the Premises; (3) the first day of the first calendar month occurring at least nine months after the Lessee has obtained all necessary permits, licenses and approvals to install the tower; or (4) the first day of the first calendar month occurring at least eighteen months after the Execution Date.

(j) "Town Property" shall mean known as Lot IP16, Block 17 on the Town of Sterling Assessor's Map #8342, which property includes without limitation, the premises. (Also refer to mylar map #811.)

ARTICLE THREE

Lease Term

The Term shall commence on the Execution Date and, unless extended or terminated as provided herein, shall expire at the end of the Initial Term. This Lease may be extended by Lessee for up to five (5) additional, consecutive five-year Extension Terms, and it shall be deemed to be automatically extended for each such Extension Term unless Lessee provides written notice of Lessee's intent to terminate the Lease at least ninety (90) days prior to the expiration of the Initial Term or the then current Extension Term. Notwithstanding the foregoing provisions, this Lease shall terminate on the first day of the first calendar month occurring at least eighteen months after the Execution Date if the Lessee has not commenced and continued to pay rent pursuant to Section 5.01 of this Lease.

ARTICLE FOUR

Use

Section 4.01 Permitted Uses. Lessee shall use and occupy the Premises only for the placement, management and operation of a telecommunication tower with associated antennas, transmission facilities, equipment and structures. No other use of the Premises may be made by Lessee without Lessor's written consent. Lessor shall be entitled to install, or have Lessee install, telecommunications equipment on the tower at no cost to the Lessor, and without any obligation by Lessor to pay rent or other occupancy charges, provided: (a) Lessor shall not be entitled to install such equipment at a location or in a manner that would unreasonably interfere with Lessee's use of the tower; (b) Lessor's use shall be restricted to noncommercial, municipal purposes and emergency services, such as police, fire, and ambulance.

Section 4.02 Governmental Matters. If any governmental licenses, permits or approvals are required for the proper and lawful conduct of the Permitted Uses or any part thereof, Lessee shall, at its sole expense, duly procure and thereafter maintain such licenses, permits and approvals and shall submit the same to Lessor for inspection. Lessee shall at all times comply with the terms and conditions of each such license, permit and approval. Lessor shall reasonably cooperate with Lessee to the extent necessary for Lessee to obtain such licenses, permits and approvals, provided that the Lessee shall reimburse the Lessor for any expenses incurred in so doing.

Section 4.03 Lessee's Responsibility. Lessee shall not at any time use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done on the Premises, in any manner (a) that causes or is liable to cause injury to the Premises; or (b) that constitutes a violation of any applicable laws and requirements of any Governmental Authority or the requirements of insurance bodies. Notwithstanding anything herein contained to the contrary, Lessee shall not use, treat, store or dispose of any Hazardous Materials on the Premises, except that Lessee may use small amounts of substances customarily purchased and used for routine cleaning and maintenance, provided such substances are used and disposed of properly. Lessee shall provide Lessor with two copies of any reports or other documentation it receives with respect to any testing or inspection of the Premises within 30 days after it receives such reports or documentation.

Section 4.04 Lessor's Responsibility. Lessor makes no warranty or representation regarding the suitability of the Premises for the Lessee's Permitted Uses. Lessor will be under no obligation nor have liability of any kind



or character in connection with the construction, operation or maintenance of the Lessee's Permitted Uses. Notwithstanding the foregoing provisions, when Lessor enters the Premises during the Term, Lessor shall not do or permit anything to be done on the Premises, in any manner (a) that causes or is liable to cause injury to the Premises; or (b) that constitutes a violation of any applicable laws and requirements of any Governmental Authority or the requirements of insurance bodies: (c) use, treat, store or dispose of any Hazardous Materials on the Premises, except that Lessor may use small amounts of substances customarily purchased and used for routine cleaning and maintenance, provided such substances are used and disposed of properly.

ARTICLE FIVE

Rent

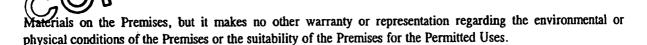
ARTICLE SIX Utilities and Services

Section 6.01 <u>Lessee's Responsibility</u>. Lessee shall arrange for, and shall promptly pay when due, all charges for gas, water, sewer, electricity, fuel, light, heat, power, and/or other utilities used by it on the Town Property throughout the Term.

Section 6.02 <u>Lessor's Responsibility</u>. Lessor is not, nor shall it be, required to furnish to Lessee any water, sewer, gas, heat, electricity, fuel, light, power, telephone, or any other facilities, equipment, labor, materials or any services of any kind whatsoever.

ARTICLE SEVEN Condition Of Premises

Lessee's taking possession of the Premises shall be conclusive evidence that such Premises, including but not limited to soil, subsurface earth materials, surface waters and groundwater, were in good order and satisfactory condition for Lessee's purposes when Lessee took possession, except as to items of damage used by Lessee or its agents, independent contractors or suppliers. Lessor represents that it has no knowledge of any Hazardous



ARTICLE EIGHT Repairs And Maintenance

Section 8.01 Lessee shall, throughout the Term, at Lessee's sole cost and expense, keep and maintain the Premises in good order, condition and repair, and Lessee shall not commit or suffer any waste with respect thereto. Lessee shall promptly make all repairs, interior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, and necessary to keep the Premises in good and lawful order and condition, and such repair shall be at least equal in quality and class to the original work.

Section 8.02 If Lessee fails to perform any repairs, restoration or other work which Lessee is obligated to perform under this Lease and such default is not remedied within the applicable grace period provided in Section 15.01 of this Lease, Lessor and its authorized representatives shall have the right to enter the Premises and to perform such work. Any amount paid by Lessor for any of such purposes, and all necessary costs and expenses of Lessor in connection therewith, shall be due and payable by Lessee to Lessor as Additional Rent. Nothing in this Section shall imply any duty upon the part of Lessor to do such work or to make any alterations, repairs (including, but not limited to, repairs and other restoration work made necessary due to any fire or other casualty), additions or improvements to the Premises, of any kind whatsoever. During the progress of any such work, Lessor shall not unreasonably interfere with the conduct of Lessee's business, but the obligations of Lessee under this Lease shall not thereby be affected in any manner whatsoever.

ARTICLE NINE Lessee's Improvements

Lessee shall make no structural or exterior alterations, installations, additions or improvements (hereinafter individually and collectively referred to as "Lessee's Improvements") in or to the Town Property without Lessor's prior written consent. Except with respect to alterations or improvements not necessary for the Permitted Use, such consent shall not be unreasonably withheld. Lessor's failure to respond to a written request by Lessee for consent any Lessee's Improvements shall, after ten days from Lessor's receipt of such request, be deemed an approval of such request, provided, however, that the Lessee has submitted to the Lessor, with such request, copies of any plans, schematics, elevations and/or specifications necessary for the Lessor to have an adequate opportunity to review and evaluate such request. Notwithstanding the right of Lessor to approve any matter described in this Article, Lessor shall have no responsibility or liability for the performance or quality of work of any contractor, subcontractor, agent or consultant of Lessee. The approval by Lessor, whether express or implied, of Lessee performing Lessee's Improvements in or to the Premises or the construction of any buildings or structures shall in no way affect Lessor's rights or Lessee's obligations relating to the restoration of the Premises.

ARTICLE TEN

Compliance With Laws And Requirements Of Governmental Authorities

Lessee shall comply with all applicable laws and requirements of any Governmental Authorities relating to its possession and use of the Premises. Lessee shall pay all costs, expenses, fines, penalties and damages that may be imposed upon Lessor by reason of or arising out of any failure by Lessee to comply with and observe the provisions of this Section fully and promptly.



Section 11.01 Lessee's Required Insurance. During the Term hereof Lessee shall, at its own cost and expense, provide and keep in force for the mutual benefit of Lessor and Lessee, comprehensive general public liability insurance policies against claims for bodily injury, death or property damage occurring in or about the Premises (including, without limitation, bodily injury, death or property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof, and assumed property damage coverage), with limits of not less than (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person; (ii) two million dollars (\$2,000,000.00) for bodily injury or death to any number of persons in respect of any one accident or occurrence; and (iii) one million dollars (\$1,000,000.00) for property damage (including environmental pollution or contamination) in respect of any one accident or occurrence. The Town of Sterling shall be named as an additional insured on such policies.

Section 11.02 Personal Property. In respect of any personal property and trade or other fixtures owned by Lessee and located in, at or upon the Premises, Lessee hereby releases Lessor from any and all liability or responsibility to it or anyone claiming by, through or under it by way of subrogation or otherwise, for any loss or damage to such property caused by fire or any of the extended coverage casualties.

Section 11.03 Workmen's Compensation. Lessee shall provide and keep in full force and effect worker's compensation insurance providing statutory Connecticut benefits for all persons employed by Lessee in connection with the Premises.

ARTICLE TWELVE Assignment

Section 12.01 Prior Written Consent. Lessee may not assign this Lease or sublet all or any part of the Premises without the prior express written consent of Lessor, which shall not unreasonably be withheld.

Section 12.02 <u>Assignee and Lessee Liable</u>. Any assignment or transfer shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Lessor an agreement in form and substance satisfactory to Lessor whereby the assignee shall assume the obligations of this Lease on the part of Lessee to be performed or observed and whereby the assignee shall agree that the provisions in Section 12.01 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments or transfers.

ARTICLE THIRTEEN Lessee's and Lessor's Property

Section 13.01 Lessee's Property

13.01.01 The telecommunication tower, as well as all business and trade fixtures, machinery and equipment that are installed in or located within the Premises by or for the account of Lessee, without expense to Lessor, and that can be removed without structural damage to the Town Property, and all articles of movable personal property owned by Lessee and located in the Premises (all of which are sometimes called "Lessee's Property") shall be and shall remain the property of Lessee and may be removed by it at any time during the Term of this Lease; provided that if any of Lessee's Property is removed, Lessee shall repair or pay the cost of repairing any damage to the Town Property, including the Premises, resulting from such removal.

13.01.02 On or before the Expiration Date, or as promptly as practicable thereafter, Lessee's Property (except such items thereof as Lessee shall have expressly agreed in writing with Lessor shall remain and become the property of Lessor) shall be removed by Lessee, and Lessee shall repair any damage to the Town Property

Expiration Date may, at the option of Lessor, be deemed to have been abandoned, and in such case either may be retained by Lessor as its property or may be disposed of, without accountability, in such manner as Lessor may see fit, at Lessee's expense.

- 13.02 <u>Lessor's Property</u>. Except as provided in Section 13.01, above, all Lessee's Improvements, as defined in Article Nine, shall be deemed the property of Lessor and shall not be removed by Lessee without Lessor's consent.
- 13.03 <u>Performance Bond</u>. Lessee shall post a bond in the amount of Twenty Thousand Dollars (\$20,000.00) in form and content satisfactory to the Lessor to secure Lessee's obligation to remove all structures, fixtures, machinery and equipment as may be required by the Lessor and to secure the performance of Lessee's other obligations under this Lease. Such bond shall expire no earlier than the expiration date of the Initial Term or then-current Extension Term. Upon the beginning of any Extension Term, the amount of the required bond shall be increased by fifteen percent (15%) from the amount of the bond during the previous term.

ARTICLE FOURTEEN Surrender

On the Expiration Date of this Lease, or upon any earlier termination of this Lease, or upon any re-entry by Lessor upon the Premises, Lessee shall quit and surrender the Premises, including Lessee Improvements, to Lessor in good order, condition and repair, except for ordinary wear and tear, and Lessee shall remove all of Lessee's Property therefrom except as otherwise expressly provided in this Lease.

ARTICLE FIFTEEN Events of Default

Section 15.01 Events of Default. Each of the following events shall be an "Event of Default" hereunder:

- (a) Failure by Lessee to pay any installment of Rent within thirty (30) days after the same shall become due and payable.
- (b) Failure by Lessee to make any other payment required to be paid by Lessee hereunder for a period of thirty (30) days after Lessee receives written notice thereof from Lessor.
- (c) Failure by either party to observe or perform one or more of the other terms, covenants and conditions contained in this Lease, except for the payment of Rent by Lessee, and such failure shall continue for a period of sixty (60) days after the defaulting party receives written notice thereof from the other party specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed that cannot by their nature reasonably be performed, done or removed, as the case may be, within such sixty (60) day period, in which case no default shall be deemed to exist as long as the defaulting party shall have commenced curing the same within such sixty (60) day period and shall diligently and continuously prosecute the same to completion, provided such delay in effecting cure shall not expose the other party or its employees or officials to prosecution for a crime). Nothing in this subsection shall be deemed to authorize the Lessee unreasonably to delay the commencement of any work necessary to prevent physical harm to any person or to prevent unreasonable damage to the Premises or the environment.

Section 15.02 <u>Remedies Upon Default</u>. Immediately upon any Event of Default, the non-defaulting party may terminate this Lease. The non-defaulting party shall also have such other remedies as may be provided by law with respect to such Event of Default, except that Lessee agrees that it shall not seek any economic damages against the Lessor. The failure of the non-defaulting party to terminate this Lease or seek other remedies

with respect to any Event of Default shall not be deemed a waiver of the non-defaulting party's rights to terminate this Lease or seek other legal remedies with respect to any subsequent Event of Default.

ARTICLE SIXTEEN Covenant Of Quiet Enjoyment

Lessor covenants that upon Lessee paying the Rent and all other charges payable by Lessee hereunder and the performance of all the other terms, covenants, and conditions contained in this Lease on Lessee's part to be performed, Lessee shall peaceably and quietly enjoy the Premises, without hindrance, ejection or molestation by any persons lawfully claiming under Lessor.

ARTICLE SEVENTEEN No Waiver

Section 17.01 No Waiver. The failure of either party to seek redress for the violation of, or to insist upon the strict performance of, any of the terms, covenants, or conditions contained in this Lease shall not constitute a waiver thereof by that party, and such party shall have all remedies provided herein and by applicable law with respect to any subsequent act that would have originally constituted a default pursuant to the terms of this Lease.

Section 17.02 No Surrender Implied. No act or failure to act by Lessor or Lessor's agents, employees, servants, contractors or subcontractors shall constitute an actual or constructive eviction by Lessor, nor shall such act or failure to act be deemed an acceptance of a surrender of the Premises.

ARTICLE EIGHTEEN Notices

Any notice, statement, demand or other communication required or permitted to be given or made by either party to the other pursuant to this Lease or to any applicable law or requirement shall be in writing and shall be deemed to have been properly given or made if sent by registered or certified mail, postage prepaid, return receipt requested, or by an overnight mail service with acknowledgment of delivery requested, addressed to the respective party at the following addresses:

IF TO LESSOR: Town of Sterling

Attn.: First Selectman

P.O. Box 157 Oneco, CT 06373

IF TO LESSEE:

MCF Communication, bg Inc.

Attn: Michael J. McFadden, President

668 Main Street, Suite 114 Wilmington, MA 01887

Such notice shall be deemed to have been given or made on the day so mailed, unless mailed outside of the State of Connecticut, in which case it shall be deemed to have been given, rendered, or made three (3) days following the day on which it was deposited in a United States post office or mailbox. Either party may, by written notice hereunder, designate a different address or addresses.

ARTICLE NINETEEN Notice Of Lease

At the request of either party, Lessor and Lessee shall promptly execute, acknowledge and deliver a notice of lease sufficient for recording in accordance with the statutes of the State of Connecticut.



Section 20.01 Nature of Lessee's Remedies.

20.01.01 If Lessee believes that Lessor has acted in an arbitrary and capricious manner in denying permission or refusing to approve any act that Lessee may desire to perform, Lessee may either bring an action to enjoin or reverse such decision, in which event Lessor shall not be liable for any monetary damages suffered by Lessee as a result of Lessor's actions, or Lessee may pursue mediation of the dispute by giving Lessor written notice specifying the basis of Lessee's complaint. During the thirty (30) days following Lessor's receipt of such notice (the "Dispute Resolution Period"), the parties shall each use their reasonable best efforts to resolve the dispute. If the parties are unable to resolve the dispute during the Dispute Resolution Period, the parties will attempt in good faith to resolve such dispute by mediation. The remedies herein are not exclusive; however, the parties agree not to initiate litigation with respect to any matter that they are trying to resolve pursuant to the procedures set forth in this paragraph during the Dispute Resolution Period.

20.01.02 Neither Lessor nor any agent, servant or employee of Lessor shall be liable to Lessee for any injury or damage to Lessee or to any other person or for any damage to (by vandalism, illegal entry, steam, gases, water, rain, snow, electricity or any other causes), or loss (by theft or otherwise) of, any property of Lessee or of any other person, irrespective of the cause of such injury, damage or loss, unless caused by or due to the sole negligent act of Lessor, its agents, servants or employees. Further, neither Lessor nor its agents, servants or employees shall be liable for consequential damages arising out of any loss of use of the Premises or any equipment or facilities therein by Lessee or any person claiming through or under Lessee.

Section 20.02 <u>Survival of Covenants</u>. The parties' covenants contained in this Article Twenty shall survive the Expiration Date.

ARTICLE TWENTY-ONE Indemnity

Each party shall indemnify and save the other harmless against and from any and all claims against such other party, of whatever nature, arising from (i) any act, omission or negligence of the indemnifying party, its contractors, licensees, agents, servants, employees, invitees and/or visitors; and (ii) any breach, violation or non-performance of the indemnifying party's obligations under this Lease. This indemnity and hold harmless covenant shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses (including attorneys' fees and disbursements) of any kind or nature incurred in connection with any such claim or proceeding brought thereon, and the defense thereof. This indemnity and hold harmless covenant shall survive the Expiration Date or the earlier termination of the Lease Term for acts or omissions alleged to have occurred during the Lease Term.

ARTICLE TWENTY-TWO Taxes

Lessee shall be required to pay any real estate and personal property taxes relating to Lessee's Property, as defined in Section 13.01 of this Lease.

ARTICLE TWENTY-THREE Miscellaneous

Section 23.01 <u>Integration Clause</u>. This Lease, together with all Schedules attached hereto, which by this reference are hereby fully incorporated into this Lease, contains the entire agreement between Lessor and Lessee

with respect to the Premises and all prior agreements between the parties hereto are merged into this Lease. Any amount to this Lease must be in writing and executed by both parties.

Section 23.02 Effect of Partial Invalidity. If any of the provisions of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 23.03 Choice of Law. This Lease shall be governed in all respects by the laws of the State of Connecticut.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this 5th day of May, 2006.

Signed, Sealed and Delivered in the Presence of:	LESSOR: TOWN OF STERLING
Sharon L. Church Sharon L. Church Judith K. Linish	By Puoself M Draey Russell M. Gray Its First Selectman Duly Authorized
0	LESSEE: MCF COMMUNICATIONS, BG INC.
	By: Michael McFadobin Its Preciant Duly authorized
STATE OF CONNECTICUT)) ss. Sterling COUNTY OF WINDHAM	

On this 5th day of May, 2006, personally appeared Russell M. Gray, First Selectman of the Town of Sterling, and signer of the foregoing instrument who acknowledged the same to be his free act and deed as First Selectman, and the free act and deed of the Town of Sterling, before me.

Commissioner of the Superior Court

Notary Public

JUDITH K. LINCOLN NOTARY PUBLIC-CONNECTICUT MY COMMISSION EXPIRES JULY 31, 2009

STATE OF JIVI H	· ·	
PROPERTY OF Wildleson) ss.	
	lay, 2006, personally appeared M(Fadlen,	Michael of MCE
	signer and sealer of the foregoing instrument, who	
Inc., before me.	, and the free act and deed	of MCF Communications, bg

Commissioner of the Superior Court Notary Public



Schedule A

Town of Sterling Lease Parcel Part of Industrial Park Lot 16

A certain tract or parcel of land situated in the Town of Sterling, County of Windham, State of Connecticut, depicted on a plan entitled "Boundary Survey Property to be Leased to MCF Communications, Exeter Drive, Town of Sterling, Connecticut, Scale: 1"=40', Project No. CLA-3921, Date: 4/18/06, Sheet No. 1, by CLA Engineers, Inc., Norwich, Connecticut" and being more particularly described as follows:

Beginning at an iron pin set on the northerly line of Exeter Drive, said pin replaces a destroyed monument and marks the southeasterly corner of Sterling Industrial Park Lot 16 and running thence S 78° 48' 34" W a distance of 200.64 feet by and along the northerly line of Exeter Drive to an iron pin, set; thence N 6° 36' 20" W a distance of 200.64 feet to an iron pin, set; thence N 78° 48' 34" E a distance of 200.64 feet to an iron pin set at other land of the Town of Sterling; thence S 6° 36' 20" E a distance of 200.64 feet along said Lot 16 to the iron pin at the point of beginning, bounded easterly by said other land of the Town of Sterling.

The above described lease parcel being a portion of the said Lot 16 and lying in the southeasterly corner of Lot 16.

Containing 40,130± SF or 0.921± Acre.